

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER HIRAM CANO,

Plaintiff,

-against-

ILYA KHARKOVER, et al.,

Defendants.
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22-CV-10557 (JLR) (OTW)

ORDER

ONA T. WANG, United States Magistrate Judge:

The Court has reviewed ECF Nos. 20, 21, 22, and 25. For the following reasons, Defendants' motion to revoke *pro se* Plaintiff Christopher Hiram Cano's *in forma pauperis* (IFP) status is **DENIED**.

Defendants filed a letter motion on June 30, 2023, seeking leave to file a motion to revoke Plaintiff's IFP status, claiming that Plaintiff, who is incarcerated, is barred from proceeding IFP because she has accumulated three "strikes" under the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g). (ECF 18). The Court granted Defendants leave to file and the motion was fully briefed on September 18, 2023. (*See* ECF Nos. 19, 20, 22, and 25).¹ Defendants' memorandum of law (ECF 22), points to four previous actions in which Plaintiff has proceeded IFP:

1. *Cano v. Officer Marshall (Cano I)*, No. 18-cv-4176 (E.D.N.Y.)
2. *Cano v. City of New York (Cano II)*, No. 23-cv-3807 (S.D.N.Y.)
3. *Cano v. Officer Oxley*, No. 18-cv-3428 (E.D.N.Y.)
4. *Cano v. Cohen*, No. 18-cv-11550 (S.D.N.Y.)

¹ While Plaintiff styled her untimely September 18, 2023, filing (ECF 25) as a "Motion to Strike Defendants Affirmative Defense Pursuant to Fed. R. Civ. P. 12(F)," the Court construes the filing as Plaintiff's opposition to Defendants' motion to revoke IFP status.

In an August 29, 2023, Memorandum Opinion and Order, Judge Subramanian analyzed the same issue in a separate action brought by Ms. Cano. *See Cano v. City of New York, et al.*, 23-CV-3733 (AS) (ECF 25). In that opinion, Judge Subramanian denied Defendants' motion, concluding that at least two of the cases cited by Defendants, *Cano I* and *Cano II*, do not count as strikes under the PLRA because the dismissals were not "on the grounds that [the action was] frivolous, malicious, or fail[ed] to state a claim upon which relieve may be granted." *See id.* quoting 28 U.S.C. § 1915(g).² Defendants can point to at most two strikes under the PLRA, and Plaintiff therefore may proceed IFP in this case.

Defendants are directed to respond to Plaintiff's Complaint. Further, the Initial Case Management Conference, which was adjourned pending resolution of Defendants' motion to revoke Plaintiff's IFP status, will be held telephonically on **Tuesday, November 14, 2023 at 10:30 a.m.**

IT IS HEREBY ORDERED that the Warden or other official in charge of the George R. Verno Center (GRVC) on Rikers Island, or other facility in custody of Christopher Hiram Cano, produce inmate Christopher Hiram Cano (NYSID: 13552006J; B&C: 8952200296), to an office in the facility with a reasonable degree of privacy to enable her to participate in a court conference through means of a teleconference from the facility to the United States Courthouse, Southern District of New York, on November 14, 2023, commencing at 10:30 a.m., until completion. At the date and time set forth herein, counsel for the defendants

² The PLRA's "three-strikes" provision provides: "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury." 28 U.S.C. § 1915(g).

shall place the call to the facility from the Courthouse. If this time and date presents an inconvenience, the Warden or the Warden's designee should promptly inform Chambers by calling (212) 805-0260.

Counsel for Defendants must (1) transmit this Order to the Warden forthwith and (2) contact the George R. Vierno Center (GRVC) on Rikers Island forthwith to arrange the call and to determine the telephone number at which Plaintiff will be reachable at the above time and date.

The Clerk of Court is respectfully directed to serve a copy of this Order on the *pro se* Plaintiff. The Clerk of Court is further directed to close ECF Nos. 20 and 25.

SO ORDERED.

Dated: October 2, 2023
New York, New York

/s/ Ona T. Wang

Ona T. Wang
United States Magistrate Judge